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CONCORD, N.H.

1953

Apr. 24

Admiral C. A. Brinkmann, Director
State Civil Defense
State House

Re: Senate Bill No. 70

Dear Admiral Brinkmann:

Upon further consideration and analysis of the statutory law and decisions of the Courts affecting the questions asked in your communication of April 15, 1953, I should revise my opinion given April 17, 1953 in regard to item 2(a) and should qualify the opinion given with reference to item 2(d).

2(a). Within the limitations of the charters of individual cities, expenditures may be authorized by city councils for civil defense purposes at any meeting without submission of the question to the voters at large of the cities. The provisions of Revised Laws chapter 51, section 5 as amended by the laws of 1943, chapter 37 apply to towns only and not to city councils.

Section 9(b) of the Bill sets up responsibility for the organization, administration and operation in a local director subject to the direction and control of a city council. That being so, the city council may direct the program of civil defense work to be done, but may not direct the director in his manner and method of doing the work, and such director has no power to issue the appropriation or incur liability against the appropriations until he has received directions from the city council to accomplish some program the cost of which is to be charged to the appropriation. The decisions appear to limit the director in such instances to such expenditures as are "within sound discretion".

2(d) Selectmen can authorize the diversion to civil defense

Admiral C. A. Brinkmann

April 24, 1953

emergency use of funds appropriated for and voted for other purposes, subject, however, in the case of towns which have adopted the Municipal Budget Laws, Revised Laws chapter 52, section 5, as amended by Laws of 1949, chapter 228, section 3, to the requirement that in case of sudden and unexpected emergency, the selectmen on application to the Tax Commission, after hearing, may be given a certificate of emergency authorizing them to make such expenditure or incur such liability, and provided the Budget Committee of the town has approved the expenditure.

Very truly yours,

George F. Nelson
Assistant Attorney General

GRN/PM

P. A. Smith, D. O.

10-2 - April 1, 1953 April 21, 1953

FROM

John Samuel Wheeler, M.D.
State Health Officer

AT OFFICE

Room 107 - State House

SUBJECT

TO

This section of the law indicates that a chiropractor may not engage in the practice of medicine. It is my belief that to conduct a physical examination with a view toward determining whether a child is physically able to participate in a physical education program is to practice medicine under our laws.

State House Concord

In answer to your second question, I can find no reason why a school board may not require school children to submit to physical examinations at their own expense prior to engaging in physical education programs. Certainly this is a question which may be raised by the parents of any child and should be settled locally.

I am forwarding a copy of this letter to

Dear Dr. Wheeler,

Enclosed is a letter Very truly yours, D.D. relative to physical examinations in schools concerning which I called you the other day. You suggested that I request him to put his questions in writing.

Arthur E. Bean, Jr.,
Assistant Attorney General

AEB, Jr/T

John Samuel Wheeler
John Samuel Wheeler, M.D.
State Health Officer

Enc.

P. A. Smith, D. C.

April 21, 1953

The opinion of the law indicates that a chiropractor may not engage in the practice of medicine. It is my belief that to conduct a physical examination with a view toward determining whether a child is physically able to participate in a physical education program is to practice medicine under our laws.

Apr. 21

In answer to your second question, I can find no reason why a school board may not require school children to P. A. Smith, D. C. physical examinations at their own expense prior to engaging 384 Central Street in a physical education program. Certainly this is a question which may Franklin, New Hampshire be decided by the parents of any child and should be settled locally.

Dear Sir:

Dr. Wheeler.

I am forwarding a copy of this letter to

I am in receipt of your letter of April 9, 1953, addressed to Dr. John B. Wheeler. Harkins requested that this office answer your letter.

You have asked whether a chiropractor may give physical examinations to school children to satisfy the requirement of school boards, and secondly, whether a school board may require children to secure such examinations at their own expense before being permitted to participate in physical education programs.

May I first state that there is no authority for this office to render opinions to private individuals; however, we do try to be of some service whenever possible, and therefore the following general reply is submitted for your information but not as an opinion and you are requested not to consider it or refer to it as such.

Revised Laws, chapter 252, section 11 states as follows:

"11. Effect of Certificate. Any chiropractor who has received and holds a certificate of registration and license issued by said board may adjust by hand any articulations of the spinal column, but shall not prescribe for, or administer to, any person any medicine or drugs now or hereafter included in materia medica, practice major or minor surgery, obstetrics nor any branch of medicine or osteopathy."

STATE OF NEW HAMPSHIRE

INTER-DEPARTMENT COMMUNICATION

Maynard H. Mires, M.D.

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DATE February 26, 1975

FROM

February 26, 1975

AT (OFFICE)

John T. Pappas

Attorney General

Attorney

SUBJECT

Request for opinion in regard to practice of chiropractic

To The reason for my recommendation is that your Board certainly has more knowledge than I do as to what ultrasonic equipment Maynard H. Mires, M.D. whether such equipment is classified as "other Board of Registration in Medicine" used in the practice of chiropractic."

At such time as I receive a reply to this memorandum and depending this is in reply to your memorandum of January 21, 1975. or not to write an opinion on this matter.

Enclosed are copies of the opinions of this office relative to the practice of chiropractic which you mentioned.

John T. Pappas

These opinions are dated March 22, 1961, May 19, 1964 and December 3, 1965, and were issued under former RSA 316:1 (which you quote in your memo). The present RSA 316:1 (supp) became effective on July 1, 1971, and provides as follows:

"The science of chiropractic deals with the analysis of any interference with normal nerve transmission and expression, the procedure preparatory to, and complementary to the correction thereof, by an adjustment of the articulations of the vertebral column and its immediate articulations for the restoration and maintenance of health; it includes the normal regimen and rehabilitation of the patient without the use of drugs or surgery. The term analysis is construed to include physical examination, the use of x-ray and other analytical instruments generally used in the practice of chiropractic."

Thus, you can see that the present RSA 316:1 substantially changed former RSA 316:1 and that at least part or possibly all of our office's former opinions may not now be applicable.

I recommend that your Board review or consider the present RSA 316:1 and if the Board feels that some chiropractors are not practicing chiropractic in accordance to the present statute and are actually practicing medicine, please advise me of the reasons why the Board feels that such chiropractors are actually practicing medicine.

Maynard H. Mires, M.D.

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February 26, 1975

February 26, 1975
U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

The reason for my recommendation is that your Board certainly has more knowledge than I do as to what ultrasonic equipment does and as to whether such equipment is classified as "other analytical instruments generally used in the practice of chiropractic."

At such time as I receive a reply to this memorandum and depending on the availability of my time, I will consider whether or not to write an opinion on this matter. As to utilizing modern diagnostic and treatment techniques which will help in the recovery of the patient, the practice of chiropractic is no exception.

John T. Pappas

Attorney

Attorney John T. Pappas states that the practice of adjusting the spine of a patient by hand the way that movable vertebrae of the spine can or misalignments of the sacroiliac joint releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of current (nerve energy) from the brain to all parts of the body. Whereas 316:13 further limits the practice of chiropractic by stating that a chiropractor may adjust by hand any articulations of the spine, but shall not prescribe for, or administer to, any person any medicine or drugs now or hereafter included in materia medica, practice of minor surgery, obstetrics nor any branch of medicine or surgery. In spite of this, we find that some chiropractors in this state are making use of ultrasound equipment, are using ultrasonic waves as a means of making use of pulsating waves in order to relieve muscle spasms and therefore, to relieve pressures on the nerve. Furthermore, some chiropractors do things which definitely have nothing to do with chiropractic such as drawing blood, prescribing massive doses of vitamins, and applying traction on limbs to relieve symptoms.

I can well understand the natural tendency for a chiropractor to want to employ these methods, but I still wonder if it is legal for him to do so. About 10 years or more ago, I understand that Attorney General Wyman gave an opinion which definitely limited the practice of chiropractors and limited them from doing the types of things which I have mentioned. I can give you the exact reference.

Thank you for your help in this matter.

MHM;